

REMARKS

Claims 1-4, and 14-19 are pending in this application. Claims 14-17 have been withdrawn from consideration. Accordingly, claims 1-4, 18, and 19 are before the Examiner.

Applicants note with appreciation the withdrawal of all rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

The Remaining Rejection

The sole remaining rejection is an obviousness type-double patenting rejection. Nevertheless, Applicants respectfully request that the rejection be held in abeyance pending resolution of the issues discussed below.

35 U.S.C. § 103

Applicants note with appreciation that the rejections under 35 U.S.C. § 103 have been withdrawn "as applicants have provided a statement of common ownership."

Upon reviewing the prior Office Action (mailed September 28, 2006) and response thereto, Applicants note that reliance on a statement of common ownership to overcome the rejection may have been improper. The rejection reads:

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 18 and 19 are rejected under 35 U.S.C. 103(a) as being obvious over

US6995167 , US 2003149065, US 2005250802, Loch James III (WO 0042044)

And Phillips et al, US 6110914 and US 6569865, WO 99/03859.

US 10/511535,

The applied reference has a common assignee with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art only under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 103(a) might be overcome by: (1) a showing under 37

Applicants, upon further review, however, have recognized that the Office's statement "it constitutes prior art only under 35 U.S.C. § 102(e) does not appear to be true for each of the cited references. Thus, Applicants reliance on this statement and the furnishing of a statement of common ownership, does not appear to be appropriate. Applicants respectfully assert that they offered the statement of common ownership in a sincere effort to advance the prosecution of the present case without recognizing the potential flaw in the suggested approach. Applicants did not intend to deceive the Office in any way. Applicants, having reconsidered the file history, have now identified Applicants' error, as well as Office error, and are now attempting to correct the record and their actions, prior to allowance.

Because the rejection is not properly before Applicants, Applicants respectfully request that the finality of the present action be withdrawn, and a new action, presenting a corrected 35 U.S.C. § 103 rejection, be issued, resetting the period for response. Applicants further request, that since the error seems to have been by both the Office and the Applicant, that the next

action be non-final, so the originally intended rejection can be properly and clearly set forth by the Office and addressed by Applicants.

The Commissioner is hereby authorized to charge any fee or underpayment thereof or credit any overpayment to Deposit Account No. 260166.

Early reconsideration and allowance of all pending claims is respectfully requested. The examiner is requested to contact the undersigned attorney if an interview, telephonic or personal, would facilitate allowance of the claims.

Respectfully submitted,
/Michael A. Patané/

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